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11
12 **UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

13
14 In re:

15 ASTRIA HEALTH, *et al.*,

16 Debtors and Debtors
in Possession.¹

17
18 Chapter 11
Lead Case No. 19-01189-11
Jointly Administered

19 DEBTORS' MOTION FOR ENTRY OF AN ORDER
PURSUANT TO SECTION 1121 OF THE
20 BANKRUPTCY CODE EXTENDING THE EXCLUSIVE
PERIODS TO FILE A CHAPTER 11 PLAN AND
SOLICIT ACCEPTANCES; DECLARATION OF JOHN
M. GALLAGHER IN SUPPORT THEREOF

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1 Astria Health, a Washington nonprofit public benefit corporation (“Astria”),
2 and the above-referenced affiliated debtors and debtors in possession (the
3 “Debtors”) under chapter 11 of title 11 of the United States Code, §§ 101 *et seq.*
4 (the “Bankruptcy Code”),² in these chapter 11 cases (the “Chapter 11 Cases”), by
5 and through the undersigned counsel of record, respectfully request the entry of an
6 order (i) extending the Debtors’ exclusive right to file a plan of reorganization and
7 gain acceptances of a plan of reorganization from September 3, 2019 and
8 November 4, 2019, to January 2, 2020 and March 3, 2020, respectively, and (ii)
9 granting the Debtors such other and further relief as is just.

10 I. JURISDICTION AND VENUE

11 The Court has subject matter jurisdiction to consider and determine this
12 Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant
13 to 28 U.S.C. § 157(b)(2). The Debtors consent to entry of final orders and
14 judgments by the bankruptcy judge. Venue is proper before this Court pursuant to
15 28 U.S.C. §§ 1408 and 1409.

16 _____
17 ² All references to § herein are to sections of the Bankruptcy Code. All references
18 to “Bankruptcy Rules” are to provisions of the Federal Rules of Bankruptcy
19 Procedure. All references to “LB” are to provisions of the Local Bankruptcy
20 Rules of the United States Bankruptcy Court for the Eastern District of Washington
(the “Bankruptcy Court”).

1 The statutory predicate for the relief requested herein is § 1121(d).

2 **II. BACKGROUND**

3 **A. General Background**

4 1. On May 6, 2019 (the “Petition Date”), each of the Debtors filed a
5 voluntary petition for relief under the Bankruptcy Code. These Chapter 11 Cases
6 are being jointly administered before this Court. [Docket No. 10]. The Debtors are
7 operating their businesses as debtors in possession pursuant to §§ 1107 and 1108.

8 2. Debtor Astria, a Washington nonprofit corporation, is the direct or
9 indirect corporate member of several entities that make it the largest non-profit
10 healthcare system based in Eastern Washington. The Astria system is
11 headquartered in the heart of Yakima Valley, Washington, with operating hospitals
12 in Yakima, Sunnyside, and Toppenish, Washington.

13 3. The Astria system includes three hospitals: Astria Regional Medical
14 Center, a 214-bed hospital in Yakima, Washington (“Yakima”); Astria Sunnyside
15 Hospital, a 38-bed critical access hospital in Sunnyside, Washington (“Sunnyside”);
16 and Astria Toppenish Hospital, a 63-bed hospital in Toppenish, Washington
17 (“Toppenish,” and referred to collectively with Sunnyside and Yakima as the
18 “Hospitals”). In addition to collectively having 315 licensed beds, the Hospitals
19 have three active emergency rooms and a host of medical specialties. The Astria
20 system also has outpatient Astria Health Centers (14 medical clinics and 24

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**MOTION TO EXTEND
EXCLUSIVITY**

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1 specialty clinics), the Ambulatory Surgical Center, Astria Hearing and Speech, and
2 Astria Home Health and Hospice.

3 4. The Astria system provides medical treatments to approximately
4 346,400 patients annually, including approximately 7,344 who spend at least one
5 night in its Hospitals during the year. Astria's necessity to the health and welfare of
6 the people of the Yakima Valley is evidenced by several facts, including having the
7 only open-heart surgery, neurosurgery, and elective cardiac catheterization
8 programs in Yakima County; the only hospitals in Sunnyside and Toppenish,
9 Washington; and the only obstetric services in the Lower Valley (both at Sunnyside
10 and Toppenish).

11 5. The system employs approximately 1,547 employees (making it one of
12 the largest employers in the Yakima Valley), plus an additional 172 contract
13 personnel, and approximately 600 doctors have privileges at the Hospitals.

14 6. On May 24, 2019, the Office of the United States Trustee (the "U.S.
15 Trustee") appointed an Official Committee of Unsecured Creditors in these Chapter
16 11 Cases.

17 7. Additional background facts on the Debtors, including an overview of
18 the Debtors' business, information on the Debtors' capital structure, and events
19 leading up to these Chapter 11 Cases, are contained in the *Declaration of John M.*
20 *Gallagher in Support of Emergency First Day Motions* [Docket No. 21] (the "First

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Day Declaration’’).

B. Facts Relevant to the Motion

8. Pursuant to § 1121, the exclusive period within which the Debtors can file and solicit votes on a plan of reorganization expires on September 3, 2019 and November 4, 2019, respectively.

9. As discussed in the First Day Declaration, prior to the bankruptcy filing, Astria contracted with a vendor (the “Vendor”) to provide a new system-wide Electronic Health Record platform for ambulatory and inpatient services for all three Hospitals and their clinics. First Day Declaration, ¶ 55. Shortly thereafter, Astria also contracted with the Vendor for the outsourcing of its revenue cycle, billing and collection functions and extended business office services. *Id.* In connection with the system conversion and the outsourcing of its revenue cycle functions, Astria has experienced certain unexpected challenges including, among other things, a significant decline in cash flow from collections on accounts receivable. *Id.*

10. Since these Chapter 11 Cases have been filed, the Debtors have continued to generate substantial receivables. The Debtors are in the process of transitioning from the Vendor to a new revenue cycle firm to accelerate collection of the Debtors' significant accounts receivable and oversee the Debtors' revenue cycle, billing and collection functions. The Debtors have retained GAFFEY

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1 Healthcare (“Gaffey”) to address the systems, cash flow and collections issues
2 experienced in connection with its system conversion and revenue cycle
3 outsourcing to Vendor. Gaffey is in the process of stabilizing collections of
4 outstanding receivables in tranches.

5 11. The Vendor, in violation of its obligation to continue to perform,
6 slowed its “touching” of individual claims during its transition to Gaffey. Other
7 recent unexpected issues arose due to Vendor instituted system upgrades which
8 resulted in delays in collecting certain batches of claims. These are not lost
9 however, and will continue to be collected over time.

10 12. The transition of the management of the Debtors’ revenue cycle,
11 billing and collection functions from the Vendor to Gaffey is 95% complete. To
12 complete the transition, the Debtors need the Vendor to complete certain system
13 updates and provide more data as requested by the Debtor and Gaffey. The Debtors
14 hope to complete this transition in the near future.

15 13. Once this transition is complete and Gaffey is solely managing these
16 functions, the Debtors believe that they will begin to meet or exceed their
17 collections projections. However, the aged receivables will not be fully collected
18 prior to the expiration of exclusivity on September 3, 2019.

19 14. Also, recently on July 16, 2019, the Debtors filed an application to
20 retain Piper Jaffray & Co. (“Piper”) to serve as the investment banker to the

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1 Debtors and assist in, among other things, obtaining exit financing. [See Docket
2 No. 394]. While Piper has made progress in securing a lender to provide exit
3 financing to the Debtors, Piper will not obtain a commitment to provide exit
4 financing prior to the expiration of exclusivity on September 3, 2019.

5 15. In sum, the Debtors need to restore liquidity and fix issues regarding
6 their collections systems before they will be in a position to file a plan of
7 reorganization. The Debtors do not anticipate resolving these issues before
8 exclusivity expires on September 3, 2019. Therefore, the Debtors seek an extension
9 of the period in which they have exclusive rights to file a plan.

10 16. However, the Debtors have made significant improvements in
11 operations since the Chapter 11 Cases commenced. For example, the debtor-in-
12 possession financing has allowed significant improvements in operations, which,
13 without doubt, has increased the value of the assets. During the course of the
14 bankruptcy, much of Astria's energy is focused on dealing with clinical
15 (equipment), patient life safety, regulatory and accreditation matters, all of which
16 are improved, and all of which would have decreased the value if it been had sold
17 without making these improvements. At Yakima alone, the Debtors have improved
18 deficiencies such as, but not limited to the following: (a) repaired two cath labs,
19 including setting up for periodic maintenance which had not been performed in
20 months and restocked; (b) repaired and tested the EP lab which was a significant

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source of income for cardiac ablations, pacemakers, etc., and restocked; (c) repaired both CT scanners; (d) repaired MRI; (e) repaired nuclear med camera; (f) repaired ultrasound equipment; (g) repaired fluoroscopy equipment; (h) repaired the Da Vinci surgical robot; (i) serviced the Mako robotic arm; (j) did general repairs and maintenance throughout the hospital (ceiling tiles replaced, lighting repaired and replace throughout, plumbing repaired and replaced throughout); (k) addressed other regulatory issues such as boiler/chiller inspection and certification; (l) sprinkler testing and inspection, and review and inspection of fire extinguishers; (m) negative pressure room inspected and tested for appropriate air handling; and (n) negotiated new agreements with staffing agencies to make sure Astria had the appropriate level of staff (accreditation and licensing issue).

III. ARGUMENT

13 Section 1121(d) of the Bankruptcy Code grants this Court authority to extend
14 the exclusivity periods “for cause” after notice and hearing. Although the term
15 “cause” is not defined by the Bankruptcy Code, the legislative history indicates that
16 it is to be viewed flexibly “in order to allow the debtor to reach an agreement.”
17 H.R. Rep. No. 95 95th Cong., 1st Sess. 232 (1997); *see also In re McLean Indus.*,
18 *Inc.*, 87 B.R. 830, 833 (Bankr. S.D.N.Y. 1987) (quoting H.R. Rep. No. 595, 95th
19 Cong., 2d Sess. 231 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6190); *In re*
20 *Public Serv. Co. of New Hampshire*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988)

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1 ("[T]he legislative intent. . . [is] to promote maximum flexibility."')).

2 To facilitate this legislative intent, a debtor should be given a reasonable
3 opportunity to negotiate an acceptable plan with creditors and to prepare adequate
4 financial and non-financial information concerning the ramifications of any
5 proposed plan for disclosure to creditors. *See, e.g., McLean Indus.*, 87 B.R. at 833-
6 34; *In re Texaco Inc.*, 76 B.R. 322, 327 (Bankr. S.D.N.Y. 1987).

7 "A decision whether to extend or terminate exclusivity for cause is within the
8 discretion of the bankruptcy court and is fact-specific." *In re New Meatco*
9 *Provisions, LLC*, No. 2:13-BK-22155-PC, 2014 WL 917335, at *3 (Bankr. C.D.
10 Cal. Mar. 10, 2014) (quoting *In re Adelphia Communications Corp.*, 352 B.R. 578,
11 586 (Bankr. S.D.N.Y. 2006)). Courts examine a number of factors to determine
12 whether "cause" exists to extend an exclusivity period. These factors include the
13 following:

- 14 a. the size and complexity of the case;
- 15 b. the existence of good faith progress;
- 16 c. the necessity of sufficient time to negotiate and prepare adequate
17 information;
- 18 d. whether the debtor is paying its debts as they become due;
- 19 e. whether the debtor has demonstrated reasonable prospects for filing a
20 viable plan;

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- f. whether the debtor has made progress negotiating with creditors;
- g. the length of time a case had been pending;
- h. whether the debtor is seeking an extension to pressure creditors; and
- i. whether or not unresolved contingencies exist.

See In re New Meatco Provisions, LLC, 2014 WL 917335, at *3 (citing *In re Dow Corning Corp.*, 208 B.R. 661, 664-665 (Bankr. E.D. Mich. 1997). A “transcendent consideration” in deciding whether to extend exclusivity is “whether adjustment of exclusivity will facilitate moving the case forward toward a fair and equitable resolution.” *In re Henry Mayo Newhall Mem'l Hosp.*, 282 B.R. 444, 453 (9th Cir. B.A.P. 2002) (affirming extension of exclusivity in chapter 11 case of non-profit hospital) (citing *In re Dow Corning Corp.*, 208 B.R. at 670).

Here, the Debtors submit that sufficient “cause” exists pursuant to § 1121(d) to extend the exclusivity periods by 120 days.

Size and Complexity of the Cases. These are “mega” Chapter 11 Cases and are almost certainly one of the largest hospital bankruptcy cases that have been filed in this district. Moreover, these Chapter 11 Cases are very complex. Reorganizing three non-profit hospitals raises issues of healthcare regulatory law, labor law, and bankruptcy law, among other fields. Moreover, there also are many issues that arise in simply maintaining the Debtors’ operations pending resolution of these Chapter 11 Cases. Besides the issues discussed concerning the Debtors’ revenue

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1 cycle and collections, there are vendors which are requiring substantial negotiations
2 to maintain relationships.

3 Good Faith Progress. The Debtors have made significant progress in these
4 Chapter 11 Cases. The Debtors obtained final approval of a total of \$36 million of
5 debtor-in-possession financing, \$20,520,000 of which was used to pay off the
6 Outstanding Prepetition Banner Bank Obligations and Outstanding Prepetition
7 MidCap Obligations, and \$1,110,00 of which paid closing costs, yielding a net in
8 available DIP funds of \$14,370,000.³ After repairing machines and stocking up on
9 needed supplies, the Debtors have in excess of \$15,000,000 of current cash
10 available to maintain operations. The Debtors have also retained Piper who is
11 preparing a confidential information memorandum (CIM) and other materials

¹² ³ The “Outstanding Prepetition Banner Bank Obligations” and the “Outstanding
13 Prepetition MidCap Obligations” are each afforded the definition provided for in
14 the *Emergency Motion Of Debtors For Interim And Final Orders (I) Authorizing*
15 *The Debtors To Obtain Post Petition Financing; (II) Granting Security Interests*
16 *and Superpriority Administrative Expense Status; (III) Granting Adequate*
17 *Protection to Certain Prepetition Secured Credit Parties; (IV) Modifying the*
18 *Automatic Stay; (V) Authorizing the Debtors to Enter into Agreements with JMB*
19 *Capital Partners Lending, LLC; (IV) Authorizing Use of Cash Collateral; (VII)*
20 *Scheduling a Final Hearing and (VIII) Granting Related Relief* [Docket No. 15].

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1 necessary to obtain exit financing. Also, as discussed, the Debtors are working
2 toward completing their transition of the management of their revenue cycle, billing
3 and collection functions from the Vendor to Gaffey. These Debtors hope to
4 stabilize collections in the near future.

5 Necessity of Sufficient Time to Negotiate and Prepare Adequate Information.
6 While the Debtors have made progress in resolving issues concerning their revenue
7 cycle, billing and collection functions, they do not expect that collections will be
8 stabilized by the time exclusivity expires on September 3, 2019. Also, the Debtors
9 do not expect to obtain exit financing prior to the expiration of exclusivity. Once
10 liquidity is restored and collections are fixed, the Debtors believe they will be in a
11 position to file a plan of reorganization. It is for these reasons primarily that the
12 Debtors request the extension of its exclusivity period.

13 Paying its Debts As They Become Due. Creditors are not prejudiced by the
14 requested extension because the Debtors have obtained debtor in possession
15 financing and have sufficient financing to maintain operations throughout these
16 Cases, and in the interim period they are maintaining their assets and operations,
17 and paying their administrative expenses in the ordinary course of business as they
18 come due. Moreover, as discussed, the Debtors have retained Piper to assist in
19 raising exit financing to refinance the Debtors' debts at the conclusion of these
20 Cases.

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1 Prospects for Filing a Viable Plan. These Chapter 11 Cases are relatively
2 “young,” but the Debtors are diligently working towards a resolution of these
3 Chapter 11 Cases. As discussed, the Debtors are working toward their transition of
4 the management of their revenue cycle, billing and collection functions from the
5 Vendor to Gaffey and retained Piper to obtain exit financing. The Debtors, have,
6 therefore, at least as well as could be expected this early in the Cases, demonstrated
7 a reasonable prospect to file a viable plan.

8 Progress Negotiating With Creditors. The Debtors have been in regular
9 communication with the Official Committee of Unsecured Creditors as well as
10 prepetition secured lenders throughout these Chapter 11 Cases. In fact, the
11 Debtors' counsel holds conference calls with stakeholders to provide updates
12 regarding the progress of these Chapter 11 Cases and address any questions posed
13 by stakeholders. While no formal negotiations over a plan have begun, the Debtors
14 believe they have laid a solid foundation for future negotiations over a plan.

15 Length of Time the Cases Have Been Pending. These Chapter 11 Cases have
16 only been pending for less than 100 days.

17 Whether the Extension is Sought to Pressure Creditors. There is no evidence
18 to suggest that the Debtors seek this extension for anything other than good faith
19 purposes, and to allow these Chapter 11 Cases to move forward to a successful
20 conclusion.

1 Existence of Unresolved Contingencies. Once liquidity is restored and
2 collections are fixed and the Debtors obtain exit financing, the Debtors believe they
3 will be in a position to file a plan of reorganization.

4 Accordingly, the standards for an extension to be granted are satisfied, and
5 by this Motion, the Debtors seek to extend the exclusivity periods for 120 days,
6 without prejudice to the Debtors' right to request further extensions. The Debtors
7 submit that the extension is reasonable and appropriate under the circumstances and
8 should be granted as being in the best interests of the Debtors' estate and creditors.

IV. CONCLUSION

10 For the foregoing reasons, the Debtors respectfully request that this Court
11 grant the Motion and enter an order extending the Exclusivity Period for filing a
12 plan and for obtaining acceptances of such plan by 120 days through and including
13 January 2, 2020 (filing a plan) and March 3, 2020 (obtaining acceptances),
14 respectively, and grant such further relief as the Court deems appropriate.

Dated: August 13, 2019

DENTONS US LLP
SAMUEL R. MAIZEL
SAM A. ALBERTS

By /s/ Samuel R. Maizel
SAMUEL R. MAIZEL

Attorneys for the Chapter 11 Debtors and Debtors In Possession

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DECLARATION OF JOHN M. GALLAGHER

I, John M. Gallagher, declare that if called on as a witness, I would and could testify of my own personal knowledge as follows:

1. I am the President and Chief Executive Officer (“CEO”) of Astria Health (“Astria”). I am employed by AHM, Inc. (“AHM”), a nondebtor entity that provides management services to Astria and its affiliated debtors and debtors in possession (collectively, the “Debtors”) in these chapter 11 cases (the “Chapter 11 Cases”).

2. The statements herein are based upon my personal knowledge of the facts and information gathered by me in my capacity as CEO for Astria Health.

3. The Debtors have made significant improvements in operations since the Chapter 11 Cases commenced. For example, the debtor-in-possession financing has allowed significant improvements in operations, which, without doubt, has increased the value of the assets. During the course of the bankruptcy, much of Astria's energy is focused on dealing with clinical (equipment), patient life safety, regulatory and accreditation matters, all of which are improved, and all of which would have decreased the value if it been had sold without making these improvements. At Yakima alone, the Debtors have improved deficiencies such as, but not limited to the following: (a) repaired two cath labs, including setting up for periodic maintenance which had not been performed in months and restocked; (b)

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1 repaired and tested the EP lab which was a significant source of income for cardiac
2 ablations, pacemakers, etc., and restocked; (c) repaired both CT scanners; (d)
3 repaired MRI; (e) repaired nuclear med camera; (f) repaired ultrasound equipment;
4 (g) repaired fluoroscopy equipment; (h) repaired the Da Vinci surgical robot; (i)
5 serviced the Mako robotic arm; (j) did general repairs and maintenance throughout
6 the hospital (ceiling tiles replaced, lighting repaired and replace throughout,
7 plumbing repaired and replaced throughout); (k) addressed other regulatory issues
8 such as boiler/chiller inspection and certification; (l) sprinkler testing and
9 inspection, and review and inspection of fire extinguishers; (m) negative pressure
10 room inspected and tested for appropriate air handling; and (n) negotiated new
11 agreements with staffing agencies to make sure Astria had the appropriate level of
12 staff (accreditation and licensing issue).

13 4. Since these Chapter 11 Cases have been filed, the Debtors also have
14 continued to generate substantial receivables. The Debtors are in the process of
15 transitioning from the Vendor to a new revenue cycle firm to accelerate collection
16 of the Debtors' significant accounts receivable and oversee the Debtors' revenue
17 cycle, billing and collection functions. The Debtors have retained GAFFEY
18 Healthcare ("Gaffey") to address the systems, cash flow and collections issues
19 experienced in connection with its system conversion and revenue cycle
20 outsourcing to Vendor. Gaffey is in the process of stabilizing collections of

outstanding receivables in tranches.

5. The Vendor, in violation of its obligation to continue to perform, slowed its “touching” of individual claims during its transition to Gaffey. Other recent unexpected issues arose due to Vendor instituted system upgrades which resulted in delays in collecting certain batches of claims. These are not lost however, and will continue to be collected over time.

6. The transition of the management of the Debtors' venue cycle, billing and collection functions from the Vendor to Gaffey is 95% complete. To complete the transition, the Debtors need the Vendor to complete certain system updates and provide more data to Gaffey. The Debtors hope to complete this transition in the near future.

7. Once this transition is complete and Gaffey is solely managing these functions, I believe that the Debtors will begin to meet or exceed their collections projections. However, the aged receivables will not be fully collected prior to the expiration of exclusivity on September 3, 2019.

8. The Debtors obtained final approval of a total of \$36 million of debtor-in-possession financing, \$20,520,000 of which was used to pay off the Outstanding Prepetition Banner Bank Obligations and Outstanding Prepetition MidCap Obligations, and \$1,110,000 of which paid closing costs, yielding a net in available DIP funds of \$14,370,000. After repairing machines and stocking up on needed

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1 supplies, the Debtors have in excess of \$15,000,000 of current cash available to
2 maintain operations.

3 9. Also, recently on July 16, 2019, the Debtors filed an application to
4 retain Piper Jaffray & Co. ("Piper") to serve as the investment banker to the
5 Debtors and assist in, among other things, obtaining exit financing. [See Docket
6 No. 394]. Piper is preparing a confidential information memorandum (CIM) and
7 other materials necessary to obtain exit financing. While Piper has made progress
8 in securing a lender to provide exit financing to the Debtors, Piper will not obtain a
9 commitment to provide exit financing prior to the expiration of exclusivity on
10 September 3, 2019.

11 10. There are many issues that arise in simply maintaining the Debtors'
12 operations pending resolution of these Chapter 11 Cases. Besides the issues
13 discussed concerning the Debtors' revenue cycle and collections, there are vendors
14 which are requiring substantial negotiations to maintain relationships.

15 11. In sum, the Debtors need to restore liquidity and fix issues regarding
16 their collections systems before they will be in a position to file a plan of
17 reorganization. I do not anticipate resolving these issues before exclusivity expires
18 on September 3, 2019.

19 12. The Debtors have been in regular communication with the Official
20 Committee of Unsecured Creditors as well as prepetition secured lenders

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1 throughout these Chapter 11 Cases. In fact, the Debtors' counsel holds conference
2 calls with stakeholders to provide updates regarding the progress of these Chapter
3 11 Cases and address any questions posed by stakeholders. While no formal
4 negotiations over a plan have begun, I believe the Debtors have laid a solid
5 foundation for future negotiations over a plan.

6 I declare under penalty of perjury under the laws of the United States of
7 America that the foregoing is true and correct.

8

9 Dated: April 13, 2019

ASTRIA HEALTH

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By:


John M. Gallagher
Chief Executive Officer

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